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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 181

A. HOWARD MYERS ET AL., PETITIONERS

v.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

No. 182

A. HOWARD MYERS ET AL., PETITIONERS

v.

CHARLES MACKENZIE ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion of the District Court for the District of Massachusetts (R. 117, 222) applicable to both cases, is unreported, although the opinion of the District Court upon petitioner's motion to dismiss, argued at the same time but not involved in

this appeal, is reported in 15 F. Supp. 915 (R. 118–135). The original opinion of the Circuit Court of Appeals for the First Circuit (R. 229) is reported in 88 F. (2d) 154; the opinion denying leave to file a second petition for rehearing (R. 242) is reported in 89 F. (2d) 1000.

JURISDICTION

The decrees of the Circuit Court of Appeals were entered on February 12, 1937 (R. 232). A petition for rehearing (R. 232) was denied on April 5, 1937 (R. 236), and leave to file a second petition for rehearing (R. 236) was denied on May 13, 1937 (R. 243). The petitions for certiorari were filed herein June 30, 1937, and were granted October 11, 1937. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, notwithstanding the procedure and remedies provided in the National Labor Relations Act, the District Court possessed jurisdiction to grant equitable relief by injunction against the conduct of a hearing and other proceedings which had been or might be undertaken by the National Labor Relations Board pursuant to that Act.

STATUTE AND REGULATIONS INVOLVED

The text of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; U. S. C.,

Sup. II, Title 29, Sec. 151 *et seq.*), and the applicable rules and regulations made and published by the Board pursuant thereto appear in the record (pamphlet following R. 214).

The provisions of the Act are summarized in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 22–24. For the Court's convenience, the provisions pertinent here may be briefly reviewed.

The Act empowers the Board to prevent any employer from engaging in any unfair labor practice (listed in Section 8) affecting interstate or foreign commerce[1] and states that "this power shall be exclusive" (Section 10 (a)). The Board may issue its complaint and notice of hearing whenever it is charged that a person has engaged in or is engaging in an unfair labor practice forbidden by the Act. The person complained of may file an answer, appear, and adduce evidence. Interested persons may intervene (Section 10 (b)). If upon the testimony transcribed and filed with the Board, it is of the opinion that the person complained of has engaged in an unfair labor practice affecting commerce, the Board is directed to state its findings of fact, and to order him to cease and desist and to take such affirmative action as will effectu-

[1] The term "affecting commerce" is defined to mean "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." (Section 2 (7).)

ate the policies of the Act (Section 10 (c)). But if the Board is of the opinion that no unfair labor practice affecting commerce has been engaged in, it must state its findings of fact and dismiss the complaint (Section 10 (c)).

Violation of the Board's order carries no penalty. The appropriate Circuit Courts of Appeals, or in vacation, the District Courts, are given jurisdiction to enforce, modify or set aside the Board's order, upon the filing of a petition for enforcement by the Board or of a petition for review by any person aggrieved. The court acts on the entire administrative record, except that additional evidence may be ordered adduced before the Board upon stated grounds. The Board's findings as to the facts, if supported by evidence, are conclusive. The court's jurisdiction is stated to be "exclusive", subject only to review by this Court on certiorari or certification (Section 10 (e), 10 (f)).

Under Section 11, the Board is authorized to examine books and records and to issue subpoenas for the purposes of all hearings and investigations which are necessary and proper for the exercise of the powers vested in it under Section 10 (to prevent unfair labor practices) and Section 9 (to conduct investigations concerning representation). Such subpoenas can be enforced only by an appropriate order of a District Court of the United States (Section 11 (2)).

Willful interference with the Board, its members or agents in the performance of their duties

under the Act is punishable by fine or imprisonment (Section 12).

STATEMENT

The petitioner-defendants A. Howard Myers and Edmund J. Blake are respectively acting Regional Director and Regional Attorney of the National Labor Relations Board for the First Region, which includes the Commonwealth of Massachusetts. Petitioner-defendant Daniel M. Lyons was the Trial Examiner of the National Labor Relations Board duly appointed to hold the hearing enjoined in the instant case.[2]

[2] The duties of these officials are set out in the following rules of the Board:

ARTICLE II

"SEC. 5. After a charge has been filed, if it appears to the Regional Director that a proceeding in respect thereto should be instituted, he shall issue and cause to be served upon the respondent and the person or labor organization making the charge (hereinafter referred to as the 'parties to the proceeding') a formal complaint in the name of the Board stating the charges and containing a notice of hearing before a Trial Examiner at a place therein fixed and at a time not less than five days after the service of the complaint. A copy of the charge shall be attached to the complaint."

"SEC. 19. Any person or labor organization desiring to intervene in any proceeding shall file a motion in writing with the Regional Director issuing the complaint setting out the grounds upon which such person or organization claims to be interested. The original of such motion shall be signed and sworn to by the person or labor organization filing the motion, who shall file three additional copies of such motion for the use of the Board. Immediately upon filing such motion, the moving party shall serve a copy thereof upon

On April 13, 1936, upon a charge filed by the Industrial Union of Marine & Shipbuilding Workers of America, Local No. 5, the National Labor Relations Board, through its Regional Director at Boston, Massachusetts, petitioner A. Howard Myers, filed a complaint against the respondent Bethlehem Shipbuilding Corporation, Ltd., and gave notice of a hearing pursuant to Section 10 (b) of the Act (R. 31–35). The Board's complaint alleged that the company, a Delaware corporation engaged in the production, sale, and distribution of boats, ships, and marine equipment at Quincy, Massachusetts (called the Fore River Plant), had dominated and interfered with the formation and administration of a labor organization, known as

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each of the other parties to the proceeding. The Regional Director shall rule upon all such motions filed prior to the hearing, and the Trial Examiner shall rule upon all such motions filed at the hearing, in the manner set forth in Section 15 of this Article. The Regional Director or the Trial Examiner, as the case may be, may by order permit intervention in person or by counsel to such extent and upon such terms as he shall deem just. The Regional Director shall cause a copy of said ruling to be served upon each of the parties to the proceeding."

"SEC. 23. The hearing for the purpose of taking evidence upon a complaint shall be conducted by a Trial Examiner specifically designated by the Board, by the Chief Trial Examiner, or by the Regional Director. At any time a Trial Examiner may be designated to take the place of the Trial Examiner previously designated to conduct the hearing. Such hearings shall be public, unless otherwise ordered by the Trial Examiner.

"SEC. 24. It shall be the duty of the Trial Examiner to inquire fully into the facts as to whether the respondent has

the Plan of Representation of Employees, in that plant, and had contributed financial and other support to it, and had thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and 8 (2), and Section 2 (6) and 2 (7) of the Act. The company filed no answer to the Board's complaint, and no petition for intervention was filed by the respondents in No. 182 or by any other interested person. The hearing was postponed pending determination of the applications by the company, and later by a group of employees, in the District Court for preliminary injunctions.

On April 27, 1936, the company filed in the District Court for the District of Massachusetts the

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engaged in or is engaging in an unfair labor practice affecting commerce as set forth in the complaint or amended complaint. Counsel for the Board, and the Trial Examiner, shall have power to call, examine, and cross-examine witnesses and to introduce into the record documentary or other evidence."

"SEC. 32. After a hearing for the purpose of taking evidence upon a complaint, the Trial Examiner shall prepare an Intermediate Report, which he shall file with the Regional Director issuing the complaint, who will thereafter transmit the original of the Intermediate Report to the Board in Washington, D. C., and cause a copy thereof to be served upon each of the parties to the proceeding. Such report shall contain (a) findings of fact, separately stated and numbered, and (b) recommendations as to what disposition of the case should be made, which may include, if it be found that respondent has engaged in or is engaging in the alleged unfair labor practice, a recommendation as to what affirmative action should be taken by respondent to bring about a condition in harmony with the law."

bill of complaint in No. 181, against petitioners Myers, Blake, and Lyons, each individually and in his official capacity with the Board, "and as the National Labor Relations Board" (R. 2–29). The bill prayed for a temporary and, upon a final hearing, a permanent injunction against the holding of the scheduled Board hearing and the taking of further proceedings under the Act, and also for a declaratory judgment that the Act as applied to the company was unconstitutional (R. 25–29). The bill described the manner in which the company operated (R. 5–7), and alleged that the company was not engaged in interstate commerce or in transactions directly affecting interstate commerce (R. 21), that the Act was unconstitutional and void (R. 21–24), and that the procedure provided in the Act did not afford the company an adequate remedy at law (R. 24–25). The bill alleged that the holding of the hearing and the taking of further proceedings would cause the company irreparable damage by putting it to inconvenience and expense, injuring its good-will, requiring the production of witnesses and business records, and disturbing harmonious relations with its employees (R. 9–11, 13–18). It is also alleged that respondents are in danger of prosecution under Section 12 of the Act. These allegations are considered in greater detail, *infra*, pp. 22, 36–37, 40–42.

On May 4, 1936, respondents in No. 182, both individually and as officers of the Plan of Representation of Employees at the Fore River Plant,

filed a bill of complaint (R. 146), and on May 7, 1936, a substituted bill of complaint (R. 151–166), also alleging that the Act and its application to them were unconstitutional, and praying that the proceedings before the Board be enjoined, and that a declaratory judgment be rendered.

The bill of complaint alleged that the Plan of Representation of Employees had existed in the plant since 1923, for the purpose of bargaining with the company with respect to wages, hours, working conditions and the settlement of disputes (R. 155–156); that the General Body of the Plan in the plant was the representative of all employees in dealing with their employer, and that the employees had no desire to alter the Plan in effect (R. 159); that if the existing representation of employees were altered, trouble would follow with the result that the plant would close (R. 159); and that the holding of the Board hearing would discredit the Plan and deprive the employees of their right to negotiate with the company thereunder (R. 159).

Upon the filing of the bills, restraining orders were entered and later continued (R. 57, 83, 109, 110, 146, 181, 182). Petitioners moved to dismiss the bills (R. 60–65, 192–197), and thereafter filed returns to the rules to show cause why temporary injunctions should not issue (R. 66–80, 197–213). In these returns the allegations of injury in the bills were denied. Petitioners also moved to quash the subpoenas in so far as they were designated

therein "as the National Labor Relations Board" (R. 81–82, 191–182).

Affidavits in each case were filed in support of the motion for temporary injunction (R. 86–106, 167–180, 182–190), and it was agreed by the parties that the affidavits in each case might also be deemed to have been offered in evidence in the other (R. 108, 190). Thus apart from the difference in the bills of complaint the records in the two cases are the same.

The bills and affidavits also alleged that a Plan of Employee Representation was adopted in 1923 (R. 90), that the relations between the Corporation and its employees since 1923 have at all times been harmonious and friendly (R. 91, 168, 173), that the great majority of the employees favor the Plan of Employee Representation (R. 169, 173–174) and that the company had not dominated or interfered with the action of its employees under the Plan (R. 107, 167–168, 175). There were general allegations that a case in 1934 before the Old Labor Board [3] had caused unrest and disturbed morale (R, 13–17, 102–104).

On May 27, 1936, following argument, the District Court handed down a memorandum to the effect that until petitioners prevailed in their mo-

[3] The reference is to the old National Labor Relations Board, established by Executive Order under Public Resolution No. 44, 73d Congress, 2d Session.

tions to dismiss, a temporary injuncton would issue restraining them in accordance with the prayer of each complaint (R. 117). Orders granting the preliminary injunctions were filed on May 28, 1936 (R. 112–114, 220–221), together with findings of fact and conclusions of law identical for both cases (R. 111–112, 219). The injunctions were granted as prayed against the conduct of hearings and the taking of further proceedings under the Act, except that they did not enjoin petitioners "as the National Labor Relations Board" (R. 113, 221). The District Court made no specific findings of fact, but found generally "that all of the facts alleged in the plaintiff's bill of complaint" were true, that certain subpoenas had been issued by the Board, and that it did not appear that any damage, inconvenience, or loss of rights would be suffered by any person if the Board hearing were postponed pending decision on the motions to dismiss (R. 111, 219). Its conclusions of law were (1) that there was grave doubt whether the Act was not wholly unconstitutional and void, (2) that if the Board hearing were held the plaintiffs would "suffer irreparable damage of the kinds alleged in its bill of complaint," and (3) that the court was not then "able to conclude that the plaintiff has a plain, adequate, and complete remedy at law" (R. 112, 219).

Thereafter, on July 22, 1936, the District Court denied the motions to dismiss (R. 118–135; 15 F.

Supp. 915). The District Court made no decision on the prayers for declaratory relief. The temporary injunctions granted May 28, 1936, are still in effect, and it was from the orders granting these injunctions that appeals were taken by petitioners herein.

The orders granting the preliminary injunctions were affirmed by the Circuit Court of Appeals for the First Circuit on February 12, 1937 (R. 229–232; 88 F. (2d) 184). On April 5, 1937, the Court of Appeals denied a petition for rehearing based upon the conflict between its ruling and those of other Circuit Courts of Appeals (R. 236). On May 13, 1937, the Circuit Court of Appeals denied petitioners' motion for leave to file a second petition for rehearing based upon the supervening decisions[4] of this Court holding the Act constitutional (R. 236, 243). Writs of certiorari to review the decrees entered by the Circuit Court of Appeals, affirming the decrees of the District Court granting the preliminary injunctions, were issued by this Court on October 11, 1937 (R. 244).

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[4] *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49; *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58; *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103; *Washington, Virginia and Maryland Coach Co.* v. *National Labor Relations Board*, 301 U. S. 142.

SUMMARY OF ARGUMENT

The decision below affirming the issuance of an injunction against the holding of a hearing by the National Labor Relations Board is in conflict with decisions of the courts of appeals in every other circuit (except the Third, which has not passed on the issue) and in the District of Columbia.

I. This suit has been brought to enjoin the holding of an administrative hearing. The hearing can not result in an enforceable order until after a decision by the National Labor Relations Board and its affirmance by a circuit court of appeals. The procedural provisions of the Act provide an adequate opportunity to secure judicial protection against arbitrary action on the part of the Board. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 300 U. S. 1, 46. Respondents may not, in advance of any effort to enforce the Act against them and without resort to the remedies available to them under the Act, ask an equity court to hold them immune from the operation of the statute. This they may not do because the statute gives the Board and the circuit courts of appeals exclusive jurisdiction to determine the questions arising under it; because under the settled doctrine of this Court the exhaustion of the respondents' administrative remedies is a necessary prerequisite to judicial cognizance of the controversy, whether in law or equity; and because

in any event the existence of those remedies precludes resort to the extraordinary processes of equity. These principles apply when the question is whether respondents are properly subject to the Act under the commerce clause just as much as when other issues are involved. *Dalton Adding Machine Co.* v. *State Corporation Commission,* 236 U. S. 699.

II. The mere holding of an administrative hearing will not be enjoined by a court of equity. If the holding of such a hearing were in itself regarded as constituting irreparable injury, the requirement that administrative remedies must be exhausted before seeking judicial relief would be rendered nugatory.

The expense, annoyance, and inconvenience resulting from respondents having to prepare for and appear at the hearing are "incident to every sort of trial" and are not the kind of "irreparable injury which equity will interfere to prevent," but "part of the social burden of living under government." *Bradley Lumber Company* v. *National Labor Relations Board,* 84 F. (2d) 97, 100 (C. C. A. 5th), certiorari denied 299 U. S. 599. Nor does the possibility that harmonious relations between the respondents and their employees will be disturbed by the hearing (as is alleged in the bills) constitute irreparable damage cognizable in equity, as has already been determined in one case brought by the respondent corporation, as well as in other

cases. *Bethlehem Ship Building Corp., Ltd.* v. *Madden,* 86 F. (2d) 862 (Ct. App. D. C.), certiorari denied 300 U. S. 672. In any event the speculative and general assertions in the bills of complaint and the affidavits filed by respondents fall far short of proving that the mere holding of a hearing will have the consequences alleged.

III. Although the decision of a trial court granting an interlocutory injunction is ordinarily not to be disturbed on appeal, it is well established that such injunctions may be set aside when "contrary to some rule of equity, or the result of improvident exercise of judicial discretion" (*Meccano, Ltd.* v. *John Wanamaker,* 253 U. S. 136, 141), or where there is some "insuperable objection, in point of jurisdiction * * * to the maintenance of the suit" (*United States Fidelity & Guaranty Co.* v. *Bray,* 225 U. S. 205, 214). Inasmuch as respondents had not availed themselves of the administrative and statutory remedies provided by the Act, or shown any irreparable injury cognizable in equity, the granting of the injunctions in these cases was both contrary to a rule of equity and an improvident exercise of judicial discretion. Since the bills on their face are devoid of equity, this Court may not only set aside the orders granting the temporary injunctions, but should also dismiss the bills. *Mast, Foos & Co.* v. *Stover Manufacturing Co.,* 177 U. S. 485, 494.

ARGUMENT

Introduction

There have been 95 suits to enjoin the National Labor Relations Board or its officers from proceeding in accordance with the provisions of the National Labor Relations Act. Only in the cases at bar and in one other case also pending in the First Circuit do decrees restraining the Board or its officers remain outstanding. In every other circuit (except the Third, which has not passed on the issue) and in the District of Columbia, the courts of appeals have held that in view of the adequate remedies provided in the statute, equity lacked jurisdiction to grant the relief sought. In a number of these cases the circuit courts of appeals reversed decrees of the district courts granting temporary injunctions.[5] In other cases the circuit

[5] *Clark* v. *Lindemann & Hoverson Co.*, and four other cases, 88 F. (2d) 59 (C. C. A. 7th); *Clark* v. *Marathon Electric Co.*, 88 F. (2d) 59 (C. C. A. 7th) cert. den., 300 U. S. 681; *Beman* v. *Independent Workers of Clayton Mark & Co.*, 88 F. (2d) 59 (C. C. A. 7th) cert. den., 57 S. Ct. 941; *Beman* v. *Bendix Products Corp.*, 89 F. (2d) 661 (C. C. A. 7th); *Pratt* v. *Oberman & Co., Inc.*, 89 F. (2d) 786 (C. C. A. 8th); *Beman* v. *Iowa Manufacturing Co.*, 90 F. (2d) 249 (C. C. A. 8th); *Bowen* v. *James Vernor Co.*, 89 F. (2d) 968 (C. C. A. 6th); *Lyons* v. *Eagle Picher Lead Co.*, 90 F. (2d) 321 (C. C. A. 10th). Cf. also *Carlisle Lumber Co.* v. *Hope*, 83 F. (2d) 92 (C. C. A. 9th) and *Bemis Bro. Bag Co.* v. *Feidelson*, Feb. 6, 1936 (C. C. A. 6th), in which the Courts of Appeals refused stays pending appeal; and *Elliott* v. *El Paso Electric Co.*, 88 F. (2d) 505 (C. C. A. 5th), cert. den., 57 S. Ct. 945, in which a permanent injunction granted

courts of appeals affirmed decisions of the district courts dismissing the bills of complaint for want of equity.[6] Many of these decisions denying injunctions were rendered before the decisions of this Court upholding the constitutionality of the National Labor Relations Act, whereas the final decision below denying a rehearing was rendered after those decisions. The position of the other circuit courts of appeals was that the adequacy of the statutory remedy deprived equity of jurisdiction regardless of the constitutionality of the statute, or its applicability in the particular case.[7]

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by the District Court was reversed by the Circuit Court of Appeals.

[6] *E. I. Du Pont de Nemours & Co.* v. *Boland*, and three other cases, 85 F. (2d) 12 (C. C. A. 2d); *Newport News Shipbuilding & Dry Dock Co.* v. *Schauffler*, 91 F. (2d) 730 (C. C. A. 4th), cert. granted, No. 305, October Term, 1937; *Bradley Lumber Co.* v. *National Labor Relations Board*, 84 F. (2d) 97 (C. C. A. 5th), cert. den., 299 U. S. 559; *Heller Bros. Co.* v. *Lind*, and six other cases, 86 F. (2d) 862 (Ct. App. D. C.), cert. den., 300 U. S. 672. See also *General Motors Corp.* v. *Bajork*, 90 F. (2d) 248 (C. C. A. 8th); *Wilson & Co.* v. *Gates*, 90 F. (2d) 247 (C. C. A. 8th).

[7] *E. I. du Pont de Nemours & Co.* v. *Boland*, 85 F. (2d) 12 (C. C. A. 2d); *Bradley Lumber Co.* v. *National Labor Relations Board*, 84 F. (2d) 97 (C. C. A. 5th), cert. den., 299 U. S. 559; *Elliott* v. *El Paso Elec. Co.*, 88 F. (2d) 505 (C. C. A. 5th), cert. den., 57 S. Ct. 945; *Beman* v. *Independent Workers of Clayton Mark & Co.*, 88 F. (2d) 59 (C. C. A. 7th), cert. den., 57 S. Ct. 941; *Carlisle Lumber Co.* v. *Hope*, 83 F. (2d) 92 (C. C. A. 9th); *Heller Bros. Co.* v. *Lind*, 86 F. (2d) 862, cert den., 300 U. S. 672. The Eighth Circuit Court of Appeals, which had previously upheld the issuance of an injunction (*Stout* v. *Pratt*, 85 F. (2d) 172), changed

Two of the cases in which injunctions were denied were brought by the Bethlehem Shipbuilding Corporation itself in other circuits. Respondent's applications for an injunction on grounds substantially the same as those alleged herein were rejected in the Southern District of California (*Bethlehem Shipbuilding Corp.* v. *Nylander,* 14 F. Supp. 201) and in the District of Columbia (*Bethlehem Shipbuilding Corp.* v. *Madden,* 86 F. (2d) 862, cert. den. 300 U. S. 672).

The injunctions were granted by the District Court and affirmed by the Circuit Court of Appeals in the cases at bar on the ground that there was grave doubt as to the constitutionality of the Act (R. 113, 125, 220, 231; 88 F. (2d) 154, 155. See also 15 F. Supp. 915, 919). Such doubt was resolved by the decisions of this Court. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1; and its companion cases. Notwithstanding those decisions, however, the Circuit Court of Appeals denied the Board's motion for leave to file a second petition for rehearing (R. 242–243). Doubt as to the applicability of the Act to the company's business on the findings of the District Court appears to have been the reason for that denial (R. 243). While we share no similar

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its position after the decisions of this Court upholding the Act, on the ground that "the appellee, whether subject to the act or not, is required to avail itself of the remedies therein provided, the adequacy of which remedies can no longer be questioned." *Pratt* v. *Oberman & Co.,* 89 F. (2d) 786, 787.

doubt and believe that the allegations of the Board's complaint (pars. 1, 2, 6, 8; R. 31–34) set forth a case well within the Board's jurisdiction, as defined by this Court,[8] that question is not presented here. For the essential question raised by

[8] The Board's complaint alleged that the company "in the course and conduct of its business causes and has continuously caused large quantities of the raw materials used in the production of its boats, ships and marine equipment to be purchased and transported in interstate commerce * * *, and causes and has continuously caused the boats, ships and marine equipment produced by it to be sold and transported in interstate commerce * * *" (par. 2, R. 32). It also alleged that the unfair labor practices had led and tended to lead to strikes burdening and obstructing interstate commerce (par. 6, R. 33). The company's bill referred to the plant as an "integrated manufacturing plant" (par. 6, R. 5) at which "approximately five thousand employees" were engaged "in connection with the shipbuilding, designing, manufacturing and processing operations" of the company (par. 7, R. 6). In addition to the decisions of this Court in the *Jones & Laughlin*, *Fruehauf Trailer*, and *Friedman-Harry Marks* cases, decisions of the Circuit Courts of Appeals in cases involving manufacturing operations support the Board's position that on its allegations as to the facts the Act is applicable. *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134, 140 (C. C. A. 4th), certiorari denied, No. 368, October Term, 1937; *National Labor Relations Board* v. *Bell Oil & Gas Co.*, 91 F. (2d) 509 (C. C. A. 5th); *Renown Stove Co.* v. *National Labor Relations Board*, 90 F. (2d) 1017 (C. C. A. 6th); *General Motors Corp.* v. *Bajork*, 90 F. (2d) 248 (C. C. A. 8th); *Beman* v. *Iowa Mfg. Co.*, 90 F. (2d) 249 (C. C. A. 8th); *National Labor Relations Board* v. *Santa Cruz Fruit Packing Co.*, 91 F. (2d 790 (C. C. A. 9th) petition for certiorari pending, No. 536, October Term, 1937; *Lyons* v. *Eagle-Picher Lead Co.*, 90 F. (2d) 321, 323 (C. C. A. 10th).

this appeal is not whether the court below was correct in deeming the Act inapplicable, but whether the District Court had power to enjoin the Board's officers from holding a hearing to adduce the facts on that and other issues raised in orderly fashion in the Board's complaint, pursuant to the procedure established by the Act. To that question alone this brief is addressed.

It is our position that the respondents' remedy under the Act was adequate and exclusive, that the irreparable damages alleged in the complaints were not cognizable by a court of equity, and that therefore the District Court had no jurisdiction to grant the injunctions.

I

THE PROCEDURAL PROVISIONS OF THE ACT PROVIDE AN ADEQUATE REMEDY AGAINST ANY UNLAWFUL ATTEMPT TO ENFORCE IT, AND THEREFORE BAR INJUNCTIVE RELIEF IN THE DISTRICT COURTS

The basic objection to the maintenance of the present proceedings is that respondents may not, in advance of any effort to enforce the Act against the Corporation and without resort to the remedies available to them under the Act to prevent such enforcement, ask an equity court to hold them immune from the operation of the statute. This they may not do for the three-fold reason that the statute vests exclusive jurisdiction to entertain proceedings with respect to alleged violations of the Act in the Board and the Circuit Court of Appeals; that by the settled doctrine of this Court

the exhaustion of the respondents' administrative remedies is a necessary prerequisite to judicial cognizance of the controversy, whether in law or in equity; and that in any event the existence of the statutory remedies precludes resort to the extraordinary processes of equity.

The procedure provided in the National Labor Relations Act is substantially identical with that long established under Section 5 of the Federal Trade Commission Act. Proceedings are commenced by formal complaint based upon charges filed with the Board and an administrative hearing is held (Section 10 (b)). Interested parties, such as respondents in No. 182, may petition to intervene. The Board has no power to enforce any of its orders, but must apply to a Circuit Court of Appeals for enforcement (Section 10 (e)). The party aggrieved may also apply to a Circuit Court of Appeals to set aside an order issued by the Board (Section 10 (f)). If the Board should find on the record made in the hearing before it that an employer was not subject to its jurisdiction because not engaging in commerce as defined by the Act, or not engaged in unfair labor practices as defined by the Act, the pending complaint would be dismissed and the employer relieved of further proceedings. If the Board should find the case within its jurisdiction and the complaint sustained by the evidence, it would state its findings of fact, order the employer to cease and desist, and possi-

bly take affirmative action incidental thereto (Section 10 (c)). Such an order would not be self-enforcing and disobedience thereof would give rise to no cumulative or other penalties or fines. Only upon the affirmance of the order by the appropriate Circuit Court of Appeals, on petition by the Board or by any aggrieved person, would an employer be under any legal compulsion to comply.

In like manner, there is an adequate opportunity to defend against any unauthorized exercise of subpoena power. The Board's subpoenas are not self-enforcing, and appropriate defenses may be urged in any proceeding brought by the Board in a District Court to compel obedience (Section 11 (2)). *Federal Trade Commission* v. *Claire Furnace Co.*, 274 U. S. 160; *E. I. DuPont de Nemours & Co.* v. *Boland*, 85 F. (2d) 12 (C. C. A. 2d).[9]

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[9] Section 12 of the Act, which imposes criminal penalties upon persons "who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act" is plainly irrelevant here. That Section "cannot be construed to provide sanctions to compel obedience to the Board's orders for the enforcement of which the statute requires affirmative court mandates." *Associated Press* v. *Herrick*, 13 F. Supp. 897, 900 (S. D. N. Y.); Sen. Rep. No. 573, 74th Cong., 1st Sess., p. 15. It applies to such conduct as assault upon the Board's agents, tampering with records or coercion of witnesses (H. Rep. No. 1147, 74th Cong., 1st Sess., p. 25), not to "a bonafide resistance * * * in order to secure a court test." *Bradley Lumber Company* v. *National Labor Relations Board*, 84 F. (2d) 97, 100, cer-

In *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 46–47, this Court recognized that the remedy under the statute was an adequate one. The Court said:

> The procedural provisions of the Act are assailed. But these provisions, as we construe them do not offend against the constitutional requirements governing the creation and action of administrative bodies. See *Interstate Commerce Commission* v. *Louisville & Nashville R. Co.*, 227 U. S. 88, 91. The Act establishes standards to which the Board must conform. There must be complaint, notice and hearing. The Board must receive evidence and make findings. The findings as to the facts are to be conclusive, but only if supported by evidence. The order of the Board is subject to review by the designated court, and only when sustained by the court may the order be enforced. Upon that review all questions of the jurisdiction of the Board and the regularity of its proceedings, *all questions of constitutional right or statutory authority,* are open to examination by the court. We construe the procedural provisions as affording *adequate opportunity to secure*

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tiorari denied 299 U. S. 559. In any event, Section 12 can be enforced only by the Attorney General or the proper United States Attorney. They are not parties to this suit, and it is not alleged that they have threatened respondents with prosecution under that Section. Cf. *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 43; *Spielman Motor Sales Co.* v. *Dodge*, 295 U. S. 89; *Ex parte LaPrade*, 289 U. S. 444.

> *judicial protection against arbitrary action* in accordance with the well-settled rules applicable to administrative agencies set up by Congress to aid in the enforcement of valid legislation. [Italics supplied.]

A. *The Act Vests Exclusive Jurisdiction in the Board and the Circuit Courts of Appeals*

Since the remedy provided by the procedural provisions of the Act is adequate, as shown above, Congress has, of course, constitutional authority to declare that it shall be exclusive. *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337. That Congress has so provided, we submit, is open to no serious question.

Section 10 (a) of the Act confers upon the Board "exclusive" power "to prevent any person from engaging in any unfair labor practice * * * affecting commerce." This seems plainly to be a grant of power to determine in the first instance whether any such unfair labor practice has taken place—a grant which includes the power to make the initial determination both as to whether the person has engaged in the unfair practice and whether the practice affects commerce. The necessary result of the temporary injunctions issued in the present proceedings is to disable the Board from exercising its exclusive power to make these determinations.

Sections 10 (e) and 10 (f) of the Act, moreover, confer upon the circuit courts of appeals[10] ex-

[10] The Board may petition the district court if the Circuit Courts of Appeals are in vacation. Section 10 (e).

clusive jurisdiction to review, set aside, correct or enforce the orders of the Board. Had the Board in these cases issued an order against the Shipbuilding Corporation, it could not be contested that a district court would lack jurisdiction to enjoin its enforcement. The case stands no better because of the respondents' attempt to anticipate the issuance of an order. Apart from its encroachment upon the jurisdiction of the Board, such an attempt necessarily involves an impairment of the jurisdiction of the circuit courts of appeals. The district court here has undertaken to determine one of the very questions Congress has declared should be passed upon initially by the Board and then by the circuit courts of appeals—whether respondents' practices affect commerce within the meaning of the Act.

Taken together, the provisions of Sections 10 (a), 10 (e) and 10 (f) of the Act establish an orderly and unified method for the determination of questions arising out of the enforcement of the Act. The decisions of the courts below in these cases are plainly destructive of the scheme contemplated by Congress. They would introduce, in effect, an additional and patently uncontemplated step into the judicial and administrative processes established by the Act. Every proceeding instituted by the Board would be subject to being halted at the outset by a suit for an injunction in a district court, with review by the circuit court of appeals

and this Court, before pursuing the normal administrative and judicial course specifically provided by Congress.[11] The disastrous consequences to all parties in labor disputes of the resultant delay and expense need not be elaborated.

That Congress meant what it said when it declared that the jurisdiction of the Board and of the circuit courts of appeals should be exclusive appears plainly from the language of the House Committee Report (H. Rep. 1147, 74th Cong., 1st Sess., p. 24):

> any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may claim a review of such order in the appropriate circuit court of appeals, or in the Court of Appeals of the District of Columbia. It is intended here to give the party aggrieved a full, ex-

[11] Even a claim that the Act was invalid in its entirety would not have been cognizable in injunction proceedings. *Spielman Motor Sales Corp.* v. *Dodge*, 295 U. S. 89, 95, and cases there cited. No such claim, however, can now be made. The constitutionality of the Act as a whole is conclusively established by the decision of this Court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, *supra*. This being so, these respondents can advance no claim which may not arise on the facts of virtually any case instituted under the Act. The contention that the labor practices in question do not affect commerce within the meaning of the Act may be raised in a wide variety of situations. And if equity has jurisdiction to restrain the Board on that ground, it is arguable that it may do likewise on the ground that no unfair labor practice within the meaning of the Act has been alleged or can be shown. From the standpoint of the basis of equity jurisdiction, i. e., irreparable injury, the two grounds may not be distinguished.

> peditious, and exclusive method of review in one proceeding after a final order is made. Until such final order is made the party is not injured, and cannot be heard to complain, as has been held in cases under the Federal Trade Commission Act.

In view of the doctrine established by numerous decisions of this Court (see pp. 28, 29, 36, 38, 39, *infra*) that administrative remedies must be followed before judicial relief is sought, Congress was entitled to suppose, as it thus clearly appears it did suppose, that injunctions would not be issued to restrain proceedings brought under the National Labor Relations Act.

B. *Apart from the Statutory Provisions as to Exclusiveness, Respondents cannot Obtain Equitable Relief Without Exhausting their Administrative and Statutory Remedies*

Even if Congress had failed explicitly to negative the jurisdiction of the district courts in injunction proceedings, such jurisdiction would have been precluded. Had respondents permitted the statutory procedure to be pursued, they would have been subjected to no penalty—as has been shown—until after all questions here raised had been passed upon by the circuit court of appeals and, if necessary, by this Court. Respondents here are seeking to enjoin the first step in an administrative proceeding, before they can possibly be said to be subject to any order or statutory provision causing them injury. As this Court said in

United States v. *Illinois Central R. Co.*, 291 U. S. 457, 463:

> The various steps to be taken constitute parts of the administrative process which must be completed before the extraordinary powers of a court of equity may be invoked.

The principle that a person is not entitled to demand judicial relief from a supposed injury, actual or threatened, until administrative remedies have been exhausted finds its most frequent application in equity. There, of course, it is reinforced and supplemented by the principle of equity jurisdiction that equity cannot act unless there is no adequate remedy at law and unless an irreparable injury is threatened. In the Federal courts, this limitation of equity jurisdiction has since the Judiciary Act of 1789 been expressly imposed by statute (Act of September 24, 1789, 1 Stat. 82; 28 U. S. C., Sec. 384):

> Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate and complete remedy may be had at law.

The cases are numerous in which this Court has held that failure to resort to the administrative process precluded invocation of "the extraordinary powers of a court of equity." See *Pittsburgh, etc., Ry.* v. *Board of Public Works*, 172 U. S. 32, 44, 45; *Arkansas Building & Loan Ass'n* v. *Madden*, 175 U. S. 269; *Prentis* v. *Atlantic Coast Line Co.*, 211 U. S. 210; *Red "C" Oil Co.* v. *North Carolina*, 222

U. S. 380, 394; *Dalton Adding Machine Co.* v. *State Corporation Commission,* 236 U. S. 699; *Union Pacific R. Co.* v. *Board of Commissioners,* 247 U. S. 282; *Federal Trade Commission* v. *Claire Furnace Co.,* 274 U. S. 160, 174; *Lawrence* v. *St. Louis-San Francisco Ry. Co.,* 274 U. S. 588; *St. Louis-San Francisco Ry. Co.* v. *Alabama Public Service Commission,* 279 U. S. 560; *White* v. *Johnson,* 282 U. S. 367; *Porter* v. *Investors Syndicate,* 286 U. S. 461; *Petersen Baking Co.* v. *Bryan,* 290 U. S. 570, 575; *Pacific Tel. & Tel. Co.* v. *Seattle,* 291 U. S. 300; *United States* v. *Illinois Central R. Co.,* 291 U. S. 457; *Hegeman Farms Corp.* v. *Baldwin,* 293 U. S. 163.

The principle in question, however, is not solely one of equity jurisdiction. This Court has specifically held that it is applicable likewise in proceedings at law. *First National Bank* v. *Board of County Commissioners,* 264 U. S. 450, 455. Compare *Anniston Mfg. Co.* v. *Davis,* 301 U. S. 337. The principle, therefore, is one of judicial administration—"that administrative remedies must be exhausted as a necessary prerequisite to a judicial challenge" of administrative action. *First National Bank* v. *Board of County Commissioners, supra.* The propriety of such a rule in cases in which courts are asked to restrain acts of government officers, undertaken in the course of official duty, is self-evident. It protects the courts from unnecessary burdens and avoids the generation of

needless friction with other branches of the Government.

The requirement of exhaustion of administrative remedies is frequently applied in cases in which an administrative order has already issued but in which administrative processes for the correction of possible error have not been invoked. *E. g., United States* v. *Illinois Central R. Co.*, 291 U. S. 457. Plainly the difficulty in the present cases is more fundamental. No order has yet been issued against the respondents. The only action thus far taken has been the issuance of a complaint and notice of hearing, and the issuance of subpoenas to attend such hearing, at which the propriety of taking action against the respondent Corporation will be duly considered. The substantive provisions of the Act have not yet been applied in any way. The respondents have suffered neither injury nor the threat of injury from the Act. They have merely been notified of a proposed hearing which, if it should ultimately lead to application of the Act, can do so only after due administrative deliberation followed by invocation of the judgment of a court. Under these circumstances respondents are not now entitled to be heard upon any question contingent upon the possible application of the Act as a result of such a hearing.

The fact that respondents deny the authority of the Board to issue any order whatever against the Shipbuilding Corporation affords no basis for de-

parture from the orderly processes laid down by the statute and required by the decisions of this Court. If the contention is correct, either no order will be issued or, if an order is issued, it will not be enforced. This Court has frequently rejected similar claims that an administrative procedure might be dispensed with because the administrative body lacked any power over the subject matter. *Federal Trade Commission* v. *Claire Furnace Co., supra; Dalton Adding Machine Co.* v. *State Corporation Commission, supra; St. Louis-San Francisco Railway Co.* v. *Alabama Public Service Commission, supra; Lawrence* v. *St. Louis-San Francisco Railway Co., supra.* In this case, as in those cases, the question relates to the application of a statute valid in its terms—not to the jurisdiction of a body established by an act claimed to be totally void. The language of the *Dalton* case rejecting the contention made is equally applicable here (236 U. S. at 700–701):

> The court below remarked that it was not contended that the statute was unconstitutional but was alleged only that it was feared that it might be enforced in such a way as to contravene the Commerce Clause and suggested that if proceedings should be instituted by the Commission there would be a hearing before it, with a right to appeal to the Supreme Court of Appeals, and, upon a proper showing, to take the case to this court, and that there was nothing to indicate that the Commission would not give

> the appellant a fair hearing or would attempt to enforce the law against it in an oppressive way. On this ground, without expressing an opinion as to the liability of the appellant under the statute, it held that no case for an injunction was made out.
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> We agree with the District Court in its conclusion and in its grounds. Like it we leave on one side the merits of the appellant's claim of immunity and confine ourselves to deciding that no reason is shown for anticipating the ordinary course of the law. * * * The general principle is that it is not for the courts to stop officers of this kind from performing their statutory duty for fear that they should perform it wrongly.

The National Labor Relations Act only prohibits unfair labor practices affecting interstate commerce so as to make them subject to Federal power. Sections 10 (a), 2 (6, 7). *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1. In investigating each case, the Board must determine, as part of its statutory duty, whether interstate commerce is thus affected. If, after hearing, the Board errs in its determination as to jurisdiction, the Act affords adequate opportunity for that determination to be reviewed and set aside.[12] Upon the judicial review provided in

[12] To avoid any contention as to the possibility of waiver of constitutional rights, the Board's Rules and Regulations have at all times provided that the filing of an answer or

the Act, "all questions of the jurisdiction of the Board and the regularity of its proceedings, all questions of constitutional right or statutory authority, are open to examination by the court." *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 47.[13]

We conclude that the respondents are without standing to attack the validity of the Act in its application to the Shipbuilding Corporation because the district court lacked statutory jurisdiction over the proceedings and because, independently thereof, no controversy concerning the application of the Act which is cognizable in a court has yet arisen. The holding of the court below that the Board may be compelled to make a showing of "probable jurisdiction" over the subject matter of its inquiries before the inquiries have commenced, we submit, is not only destructive of the intention of Congress but subversive of established principles of administrative law and judicial procedure.

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other participation in Board proceedings shall not be deemed to waive any motions or objections. Article II, Sections 18, 28.

[13] Respondents cite such cases as *Crowell* v. *Benson*, 285 U. S. 22, to show that the statutory remedy is not adequate for the review of the Board's finding on the question of interstate commerce. The language quoted in the text from the *Jones & Laughlin* opinion would seem to dispose of that contention. Whatever may be the application of *Crowell* v. *Benson* to cases arising under the Act, the proper judicial forum for the determination of the question is the Circuit Court of Appeals after the Board has acted, and not the district courts before the Board has acted.

The fact that the district court in granting the injunctions here sought necessarily encroached upon the exclusive statutory jurisdiction of the Board and the circuit court of appeals to determine ultimate questions concerning the application of the Act, and in doing so anticipated any possible injury to the respondents from such application, are all-sufficient grounds for holding it to be without jurisdiction. The respondents, however, while relying on the invalidity of the Act in its application to the Shipbuilding Corporation to establish the illegality of the Board's action, urge as the basis for equitable intervention not irreparable injury from the application of the Act but from the mere holding of a hearing—that is, irreparable injury said to flow not directly from the enforcement of the Act, but incidentally or indirectly from its very administration. To the question raised by this contention we now turn.

II

RESPONDENTS ARE NOT ENTITLED TO ENJOIN THE HOLDING OF A HEARING

In view of the statutory procedure already described, it is plain that respondents are not in danger of any injury, irreparable or otherwise, resulting from orders of the National Labor Relations Board. Their complaint thus in substance comes

down to the contention that the mere holding of a hearing will cause them irreparable harm.

It follows *a fortiori* from the cases cited above in support of the proposition that administrative remedies must be exhausted that the holding of a hearing by the administrative body will not be enjoined. If expense and inconvenience resulting from the mere holding of an administrative hearing prior to ultimate judicial determination constituted irreparable injury, it is evident that the rules that one cannot complain of administrative action before the action is taken, and that one must exhaust administrative remedies before seeking relief in court would be rendered largely nugatory. Respondents have been able to point to no case in which the mere holding of a hearing as the first step in administrative proceedings has been restrained by a court of equity [14] and we have been able to find

[14] The cases cited in respondents' brief in opposition to the issuance of the writ of certiorari stand only for the general proposition that equity may act when the remedy at law is not adequate. *Watson* v. *Sutherland*, 5 Wall. 74; *Pierce* v. *Society of Sisters*, 268 U. S. 510; *Walla Walla* v. *Walla Walla Water Co.*, 172 U. S. 1; *Hitchman Coal & Coke Company* v. *Mitchell*, 245 U. S. 229; *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 592, 593; *City Bank Farmers Trust Co.* v. *Schnader*, 291 U. S. 24, 34; *Boyce* v. *Grundy*, 3 Peters 210, 215; *Kilbourn* v. *Sunderland*, 130 U. S. 505, 514–515; *Frederberg* v. *Whitney*, 240 Fed. 819, 822–823 (D. C. W. D., Wash.); *Davis* v. *Wakelee*, 156 U. S. 680, 688; *Ex parte Young*, 209 U. S. 123; *Union Pacific R. R. Co.* v. *Weld County*, 247 U. S. 282, 287; *Wallace* v. *Hines*, 253 U. S. 66, 68; *Dawson* v. *Kentucky Distilleries Co.*, 255 U. S. 288, 296. Cases such as *Terrace* v. *Thompson*, 263 U. S. 197; *Pierce* v.

none. In the few cases in which an attempt has been made to enjoin the holding of a hearing, equitable relief has been invariably denied. *Lawrence* v. *St. Louis-San Francisco Railway Co.*, 274 U. S. 588; *McChord* v. *Louisville & Nashville R. Co.*, 183 U. S. 483.

Even if we assume that, contrary to recognized equitable principles, administrative hearings might be enjoined under some circumstances, no such circumstances are found here.

The alleged injury of respondents is of two kinds. It is claimed that the holding of a hearing will harm respondent corporation and its employees (1) in that they will be subjected to the expense, annoyance and inconvenience of having to appear and give evidence, and (2) in that the harmonious relationship between the company and its employees will be disturbed and the confidence of

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Society of Sisters, 268 U. S. 510; *Ex parte Young*, 209 U. S. 123; *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365; *Pennsylvania* v. *West Virginia*, 262 U. S. 553; *Rickert Rice Mills, Inc.* v. *Fontenot*, 297 U. S. 110; *Carter* v. *Carter Coal Co.*, 298 U. S. 238, and others which might be cited, are clearly not in point. Injunctive relief was there properly afforded because the plaintiff would run the risk of incurring cumulative criminal or other penalties or exactions if he followed the normal procedure of the statute assailed as unconstitutional, or because the statute was self-operating and was presently effective against him. Under the statute at bar, no order of the Board is enforceable until approved by the appropriate circuit court of appeals, and no fines, penalties or exactions are incurred pending judicial review in that court. See pp. 21–22, *supra*.

the employees in the existing Plan of Representation destroyed.

1. We do not doubt that the respondent Corporation will be put to some expense, annoyance and inconvenience if it defends itself before the Board. But as the Seventh Circuit pointed out, this "is no adequate reason for invoking the aid of equity, as expense, annoyance and inconvenience are present in some degree in all litigation." *Beman* v. *Independent Workers of Clayton Mark & Co.*, 88 F. (2d) 59, 60 (C. C. A. 7th), certiorari denied, 57 S. Ct. 941. The contention that the Board's proceedings "will require the attendance of officers and employees at hearings, the employment of counsel, and like matters" has likewise been rejected, the Court of Appeals for the District of Columbia pointing out that "these annoying incidents are not enough of themselves to establish a case for equitable relief." *Heller Brothers* v. *Lind, Bethlehem Shipbuilding Corp.* v. *Madden,* and companion cases, 86 F. (2d) 862, 863, certiorari denied, 300 U. S. 672. Both courts approved the statement of the Fifth Circuit in the *Bradley Lumber* case, that "these things are incident to every sort of trial and are part of the social burden of living under government. They are not the irreparable damage which equity will interfere to prevent; and a suit in equity would not wholly obviate them." *Bradley Lumber Co.* v. *National Labor Relations Board,* 84 F. (2d) 97, 100 (C. C. A.

5th), certiorari denied, 299 U. S. 559. To a considerable extent these factors will also be present if the first hearing is held before a district court instead of by the Board.

In rejecting a similar attempt to prevent the holding of a hearing by the Federal Trade Commission, the Circuit Court of Appeals for the Eighth Circuit declared in *Chamber of Commerce of Minneapolis* v. *Federal Trade Commission*, 280 Fed. 45, 48:

> The real gist of the complaint here is that it is claimed, and with plausibility, that the chief petitioner is not subject to the jurisdiction of the Federal Trade Commission; that the commission is proceeding erroneously and in excess of its powers; that the taking of the testimony before a final order can be made will be very expensive; and that a grievous burden is being inflicted upon petitioners, for which an ultimate setting aside of any order that may be made will not adequately compensate them. This is true in some degree of any order of the commission which may finally be set aside. The law does not contemplate that commissions of this nature will act arbitrarily nor without probable cause. It is, of course, conceivable that they may do so; but such a possibility cannot justify this court in exceeding its statutory powers and authority.

Decisions of this Court and of Circuit Courts of Appeals with respect to claims of similar irreparable injury are to the same effect. *United States* v. *Los Angeles & Salt Lake R. Co.*, 273 U. S. 299,

314 (claim that valuation would injure carrier's credit with public); *Pittsburgh & W. V. Ry. Co.* v. *Interstate Commerce Commission,* 280 Fed. 1014 (the expense of court costs); *Richmond Hosiery Mills* v. *Camp,* 74 F. (2d) 200, 201 (allegation that complainant's employees would be disconcerted, credit impaired and orders unfilled).

2. What has been said with respect to the cost and inconvenience of attending a hearing also applies to the allegations that the hearing will disturb the harmonious relationship existing between the Corporation and its employees under the existing Plan of Employee Representation, or impair the efficiency of the employees. *Cf. United States* v. *Los Angeles & Salt Lake R. Co.,* and *Richmond Hosiery Mills* v. *Camp,* both *supra.* The same contention has been made unsuccessfully in other injunction suits brought to restrain proceedings under the National Labor Relations Act.

In the *Bradley Lumber* case, the Circuit Court of Appeals for the Fifth Circuit conceded that "no doubt an investigation may * * * stir up some feeling among employees." 84 F. (2d), at 100. The Court of Appeals for the District of Columbia, in passing upon the same claim in an equity suit brought by the Bethlehem Shipbuilding Corporation, respondent in No. 181 herein, declared that:[15]

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[15] Seven cases were decided by the Court of Appeals for the District of Columbia in one opinion, *sub nom Heller Bros. Co.* v. *Lind,* 86 F. (2d) 862. The Bethlehem Ship-

> the threatened damage is that the proposed activities of the Board under the provisions of the act must inevitably result in friction, discord, loss of efficiency, and destruction of morale among employees. In other words, that the hearings and elections proposed to be had will result in disturbing the harmonious relations of appellants and appellants' employees, and in addition will require the attendance of officers and employees at hearings, the employment of counsel, and like matters. But we think that these annoying incidents are not enough of themselves to establish a case for equitable relief.

Thus even if the allegations as to this kind of irreparable injury are to be given full credence, respondents are not entitled to equitable relief. Detailed examination of the allegations will demonstrate, however, that they consist only of general assertions, entirely speculative in character, which are not sufficient to support the far-fetched claims of irreparable injury based upon them.

Whether respondents have suffered irreparable injury must be determined on a record consisting of the verified bills of complaint and certain affidavits (R. 86–106, 167–180, 182–190). In No. 181, the bills and affidavits allege that:

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building Corporation was plaintiff in one of these cases. Certiorari was denied. *Bethlehem Shipbuilding Corporation, Ltd.* v. *Madden*, 300 U. S. 672.

(1) The Board's charge against respondent corporation will cause it to incur the odium and ill-will of the public and its employees as a violator of the laws of the United States (R. 9–10, 93). This general language is not explained or made more definite anywhere in the record. It is found only in the bill of complaint, verified by a vice president of the corporation, and in an affidavit of the General Manager of the Fore River plant.

(2) The pendency of the Board's proceeding and the holding of a hearing will damage the friendly, pleasant and harmonious relations existing between the company and its employees, impair the efficiency of the employees through the creation of disturbing and upsetting conditions, prevent the company from bargaining freely with its employees, and thereby lessen the "prospective profits" of the Shipbuilding Corporation (R. 17–19, 92–93). These statements also are found only in the bill of complaint and in the affidavit of the General Manager. No facts in support of these general allegations appear anywhere in the record, other than the equally general allegations as to the effect of the prior hearing in 1934 before the old Labor Relations Board (R. 13–17, 102–104). It appears from the bill itself that, despite that hearing, the Plan of Representation was effective, and the relations between the parties thereto harmonious, at the time when the bill was filed (See R. 12–13, 156).

In No. 182, it was alleged in the bill that the hearing would cause the Plan of Employee Representation to be discredited, and the plant to close. The affidavits in support of this claim declare only that the holding of a hearing "will destroy the confidence of the employees in the Plan and will remove the support of many of the employees from the Plan" (R. 169–174), and that this "will deprive the employees of the results of many years of successful operation of the Plan" (R. 170–172).

Such broad allegations assuredly are not to be taken at their face value.[16] All of the allegations and statements are both general and highly speculative; they are nothing more than interested witnesses' conjectures as to what may happen in the future. They do not attempt to point out how or why the consequences predicted will result from the mere holding of a hearing. If the allegations are considered in connection with other statements in the affidavits submitted by respondents that the Corporation has never interfered with its employees' choice of representatives and that the vast majority of its employees support the Representation Plan and are satisfied with it (R. 107–108, 168–169, 171–172, 173–175, 177–178, 179), they are

[16] Respondent's original bill of complaint, which was verified, contained allegations of fact which were later abandoned, such as that the Board has scheduled a hearing under Section 9 (c) of the Act for the purpose of investigating a controversy concerning representation (R. 209–213).

hardly credible. Certainly they are insufficient to warrant the granting of injunctive relief.

The finding of the District Court that "all of the facts alleged in the plaintiffs' bill of complaint (as distinguished from statements and conclusions of law)" (R. 112) were true was expressed only in the general language quoted. The District Judge did not examine the evidence in his findings or opinions, or indicate which statements he regarded as decisive. The Circuit Court of Appeals has not stated in its opinions that it reexamined the evidence, or that, exercising its independent judgment, it concurred in the findings of fact of the District Court. In any event, the record below consisted entirely of the written bills and affidavits, and this Court is just as capable of forming a judgment from those documents as were the courts below. Since there was no oral evidence, the trial court had no advantage over this Court in passing upon the sufficiency of respondents' allegations and general statements.

III

THIS COURT SHOULD SET ASIDE THE TEMPORARY INJUNCTIONS AND DISMISS THE BILLS OF COMPLAINT

Although the decision of a trial court granting an interlocutory injunction is ordinarily not to be disturbed on appeal, it is well established that such injunctions may be set aside when *"contrary to some rule of equity,* or the result of improvident

exercise of judicial discretion." *Meccano Ltd.* v. *John Wanamaker,* 253 U. S. 136, 141; *Prendergast* v. *New York Telephone Company,* 262 U. S. 43, 50–51; *National Fire Insurance Co.* v. *Thompson,* 281 U. S. 331, 338; *Alabama* v. *United States,* 279 U. S. 229, 231; *Public Service Commission of Wisconsin* v. *Wisconsin Telephone Company,* 289 U. S. 67, 70; *Rogers* v. *Hill,* 289 U. S. 582, 587. In *Lawrence* v. *St. Louis-San Francisco Ry. Co.,* 274 U. S. 588, this Court reversed an order of a three-judge district court granting a temporary injunction when it appeared that adequate administrative remedies before state tribunals had not been exhausted. See also *Cavanaugh* v. *Looney,* 248 U. S. 453. This ruling is plainly applicable here.[17]

Moreover, this Court has frequently observed that in reviewing orders granting temporary injunctions, the appellate court is "authorized to review the whole of the interlocutory decree, not merely the part granting the injunction, and also to determine whether there was any insuperable objection, *in point of jurisdiction* or merits, to the maintenance of the suit, and, if there was, to direct a final decree dismissing the bill." *United States Fidelity and Guaranty Company* v. *Bray,* 225 U. S. 205, 214; *Denver* v. *New York Trust*

[17] In upholding the issuance of temporary injunctions in *Prendergast* v. *New York Telephone Company,* 262 U. S. 43, and *Ohio Oil Company* v. *Conway,* 279 U. S. 813, this Court pointed out that there were no administrative remedies which had not been availed of under the state laws.

Company, 229 U. S. 123, 136; *Metropolitan Water Company* v. *Kaw Valley Drainage District,* 223 U. S. 519, 523; *Ex parte National Enameling and Stamping Company,* 201 U. S. 156, 162; *Mast, Foos & Co.* v. *Stover Mfg. Co.,* 177 U. S. 485, 494; *Meccano Ltd.* v. *John Wanamaker,* 253 U. S. 136; *Smith* v. *Vulcan Iron Works,* 165 U. S. 518, 525. Both the circuit courts of appeals and this Court possess this power in reviewing orders granting temporary injunctions. *Denver* v. *New York Trust Company, supra.* "If the bill be obviously devoid of equity upon its face, and such invalidity be incapable of remedy by amendment; * * * we know of no reason why, to save protracted litigation, the court may not order the bill to be dismissed." *Mast, Foos & Co.* v. *Stover Mfg. Co., supra; Ex parte National Enameling and Stamping Company, supra; Smith* v. *Vulcan Iron Works, supra.* "If insuperable objection to maintaining the bill clearly appears, it may be dismissed and the litigation terminated." *Meccano Ltd.* v. *John Wanamaker,* 253 U. S. 136, at 141.

In the cases at bar the issuance of temporary injunctions was contrary to certain fundamental "rules of equity" and to the exclusive statutory scheme of administration established by Congress. *Supra,* pp. 24–34. Consequently, in accordance with the principles just stated, the temporary injunction decrees granted by the District Court should have been reversed by the court below and

remanded with direction to dismiss the bills.[18] This is the procedure which has been followed by a number of circuit courts of appeals in cases in which temporary injunctions had been granted by district courts restraining the Board or its officers from proceeding under the statute. *Supra*, p. 16, footnote 5.

The reversal of such injunctions is particularly important in this class of cases. For the issuance of a temporary injunction does not merely preserve the *status quo;* the inevitable result of the temporary injunction is that the trial of the issue is

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[18] The District Court lacked jurisdiction over the prayers for the declaratory judgments (R. 29, 164) as well as for the injunctions. The Federal Declaratory Judgments Act (48 Stat. 955; 28 U. S. C. § 400) applies only to "cases of actual controversy" in the constitutional sense and does not change the essential requisites for the exercise of judicial power. *Aetna Life Insurance Co.* v. *Haworth*, 300 U. S. 227, 239–40; *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 325. The allegations of the bills did not establish "a real and substantial controversy admitting of specific relief through a decree of a conclusive character," and hence the prayers for declaratory judgments were improper. *Aetna Life Insurance Co.* v. *Haworth*, *supra*, at 241; *Bradley Lumber Co.* v. *National Labor Relations Board*, 84 F. (2d) 97, 100 (C. C. A. 5th), cert. den., 299 U. S. 559. Moreover, the granting of relief under the Federal Declaratory Judgments Act is a discretionary matter, and Congress did not intend that Act to be employed where, as here, a special statutory method for the determination of the particular type of case has been provided. In Borchard, *Declaratory Judgments* (1934), p. 156, the author stated:

"Where, however, a *special statutory* method for the determination of the particular type of case has been provided,

transferred to the District Court. The machinery established by the Act cannot operate until the District Court determines questions of law and fact committed by Congress to the Board and the Circuit Courts of Appeals. The granting of temporary injunctions thus completely upsets the statutory plan.

CONCLUSION

The decisions below are subversive of established principles of administrative law. The issue raised by the instant cases is of course pertinent not simply to the administration of the National Labor Relations Act but to the operation of many other statutes entrusted by legislatures to administrative and quasi-judicial bodies. The effect of the decrees below is to nullify the carefully devised statutory procedure set up by Congress, a procedure which this Court has held to be valid and adequate. The decrees below in effect substitute the District Court for the Board as the tribunal to hear and determine what Congress declared the Board exclusively should hear and determine in the first instance. They disregard the advantages of initial proceedings before experts experienced by length of service in dealing with the special problem.

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it is not proper to permit that issue to be tried by declaration. This would amount to ousting of its jurisdiction a statutory court prescribed for the particular case, and it was not intended that a declaration should be employed for such a purpose. This, however, is quite different from refusing a declaration merely because a general or common-law remedy might have been invoked."

Humphrey's Executor v. *United States*, 295 U. S. 602, 625; *Florida* v. *United States*, 292 U. S. 1, 12; *United States Navigation Co.* v. *Cunard S. S. Co.*, 284 U. S. 474, 485.

We submit that the respondents in both cases had an exclusive and an adequate remedy at law, that their allegations of injury were not cognizable in equity, and that therefore the bills should have been dismissed for want of both statutory jurisdiction and equity jurisdiction. Accordingly, the decrees of the Circuit Court of Appeals for the First Circuit should be reversed and the cases remanded to the District Court with direction to dismiss the bills.

Respectfully submitted.

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